

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MAIZIE AVICHAIL,)	
As next friend for)	
T.A., a minor,)	
)	
Plaintiff,)	No. 4:09CV00069-ERW
)	
v.)	
)	
ST. JOHN'S MERCY HEALTH SYSTEM,)	
a Missouri non-profit corporation doing)	
business as ST. JOHN'S MERCY)	
MEDICAL CENTER, GERALDINE)	
JONES and FASTAFF, INC., a Colorado)	
Corporation, d/b/a Fastaff Travel Nursing)	
)	
Defendants.		

PLAINTIFF'S MOTION IN LIMINE

COMES NOW, the Plaintiff by and through her attorney, Nathan Davidovich,
Davidovich Law Firm, LLC and hereby submits her Motion in Limine as follows:

Defendants should be directed to refrain from offering improper opinion evidence where
such intended opinions do not comply with Fed.R.Civ. P. 26(a)(2), in that the required reports
have not been received from persons from whom Defendants intend to elicit opinion evidence.

1. Defendant, St. John's, in its DEFENDANT ST. JOHN'S MERCY HEALTH
SYSTEM'S DISCLOSURES PURSUANT TO RULE 26(a)(2) stated as follows:

Defendant **reserves the right to elicit opinion evidence at trial** through the
testimony of the following physicians and nurses who treated minor plaintiff TA.
at St. John's Mercy Medical Center: (a) Jeffrey Marsh, 621 S, New Ballas Road,
Suite 260A, St, Louis, MO 63141 who has been deposed; (b) Ruben Cohen,
M.D., 1830 Kehr's Mill Road, Chesterfield, MO 63005; (c) Kristen Soehngen,

M.D., 268 Spring Oaks Drive, Ballwin, MO 63011; (d) Patty Stapf, R.N., 239 Reavis Place, Webster Groves, MO 63119 who has been deposed; (e) Allison Galiley R.N., 5015 Cold Springs Lane, St. Louis, MO 63128 who has been deposed; and (f) Geraldine Jones, R.N. who has been deposed. Each may be asked questions about their care and treatment, the general care and treatment provided to the minor plaintiff at St. John's Mercy Medical Center, and **matters within their expertise**. Defendant further reserves the right to elicit opinion testimony from any opinion witnesses disclosed by codefendants. (Emphasis supplied).

2. Defendant, Fastaff, in its DEFENDANTS FASTAFF, INC. AND GERALDINE

JONES' DISCLOSURES PURSUANT TO RULE 26(a)(2) stated as follows:

D. Defendants **reserve the right to elicit opinion evidence** at trial through the testimony of the following physicians and nurses who treated minor plaintiff T.A. at St. John's Mercy Medical Center: (1) Jeffrey Marsh, 621 S, New Ballas Road, Suite 260A, St. Louis, MO 63141 who has been deposed; (2) Ruben Cohen, MD., 1830 Kehr's Mill Road, Chesterfield, MO 63005; (3) Kristen Soehngen, MD., 268 Spring Oaks Drive, Ballwin, MO 63011; (4) Patty Stapf, R.N., 239 Reavis Place, Webster Groves, MO 63119 who has been deposed; and (5) Allison Galiley R.N., 5015 Cold Springs Lane, St. Louis, MO 63128 who has been deposed. The Defendant Fa staff, Inc. may call **Geraldine Jones to testify that she complied with nursing standards of care** and to testify to those matters discussed at her discovery deposition. Each of the foregoing individuals may be asked questions about their care and treatment, the general care and treatment provided to the minor plaintiff at St. John's Mercy Medical Center, and **matters within their expertise**.

E. To the extent that a Rule 26 disclosure is necessary, Geraldine Jones anticipates that she will be called as a witness on her own behalf, In addition to the matters discussed at her discovery deposition, **Ms, Jones will testify that she complied with nursing standards of care**, will discuss the medical records which contain her writings and entries, will discuss her observations and recollections and will specifically respond to the criticisms made of her by Dr.Polaner. (Emphasis supplied).

While Plaintiff has no objection to testimony about each individual's care and treatment of the minor Plaintiff, opinion evidence from any of the above witnesses is improper as there have been no Rule 26(a)(2) designations or reports, as required by Rule 26(a)(2) as well as this Court's Case Management Order (Doc. 13), which stated in part:

(b) Plaintiff shall disclose all expert witnesses and shall provide the reports required by Rule 26(a)(2), Fed.R.Civ.P., no later than **October 1, 2009**, and shall make expert witnesses available for depositions, and have depositions completed, no later than **November 30, 2009**. *The Court considers a treating physician who will testify as to causation or prognosis to be an expert witness subject to disclosure under this subsection.*

Dated this 4th day of October, 2010.

Respectfully submitted this 4th day of September, 2010.

s/ Nathan Davidovich

Nathan Davidovich
Davidovich Law Firm, LLC
219 South Holly Street
Denver, Colorado 80246
Tel: (303) 825-5529
Fax: (303) 265-9797
nathandavidovich@talk-law.com

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October, 2010, a true and correct copy of the foregoing **PLAINTIFF'S MOTION IN LIMINE** was served by ECF to:

Kenneth W. Bean, Esq.
Bobbie Moon, Esq.
Sandberg Phoenix & von Gontard P.C
600 Washington Avenue - Suite 1500
St. Louis, MO 63101-1313
kbean@sandbergphoenix.com
bmoon@sandbergphoenix.com

Richard Hunsaker, Esq.
Melanie E. Riley, Esq.
HEYL, ROYSTER, VOELKER & ALLEN
Richard Hunsaker
105 West Vandalia Street, Suite 100
Edwardsville, IL 62025
rhunsaker@exchange.heyloyster.com
mriley@exchange.heyloyster.com

s/Julie Rotenberg
